Understanding § 504

Session Objectives

Following this presentation the participant should be able to:

- Compare and contrast § 504, the IDEA and the ADA;
- Understand eligibility rules related to § 504;
- Participate comfortably in the 504 process.

Does monitoring of child’s diabetes negate need for 504 plan?

A school nurse in Ohio created a plan outlining services for a middle schooler with Type 1 diabetes after her parents requested a 504 plan. Parent arrived at school to pick up child when blood sugar was low, there was no one with the child, parent complained that her 504 plan was not being followed, and was informed there was no 504 plan, that the nurse had developed a “diabetic care Plan” for the student.
Is district obligated to evaluate student because of her diabetes?

A. No. There was no evidence that the parent requested a 504 plan in writing.
B. No. The student didn’t need a 504 plan because the district was providing services that addressed her diabetes related needs.
C. Yes. A student is eligible based on diabetes, if the condition adversely affects the child’s educational performance.
D. Yes. The district had reason to suspect she was eligible.

504 vs. IDEA vs. ADA

- The Rehabilitation Act of 1973 (504)
- The Education of All Handicapped Children Act of 1975 (PL 94-142)
  - Retitled to The Individuals with Disabilities Education Act (IDEA) 1990
  - Reauthorized in 1997 and 2004 Individuals with Disabilities Education Improvement Act
- The Americans with Disabilities Act (ADA) (Title II) 1990 amended 2008 (ADAAA)

The Rehabilitation Act of 1973 (504)

- Encourage participation and equal access to federally funded programs by the disabled.
- Largely geared toward providing job opportunities and training to disabled adults.
- Also addressed the failure of the public schools to educate disabled students.
• **No otherwise qualified individual** with a disability in the United States, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal funds.

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The Individuals with Disabilities Education Act (IDEA) 1975

• Federal law governing special education
• Provides funding
• 4,000,000 children with disabilities not receiving an appropriate education
• 1,000,000 students excluded from the public school system
• Others participated but were not successful because of undetected disabilities

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504 in Schools

• Focus on non-discrimination.
• Language broadly prohibits the denial of public education participation, or benefits offered by public school programs because of a child's disability...
• No funding
• Can withdraw future funding based on non-compliance
The Americans with Disabilities Act 1990

• Picks up where 504 left off
• Applied 504 standards to private sector businesses
• Sought to eliminate barriers
• The passage of this law that got the attention of schools.

Section 504 and ADA

• § 504 prohibits recipients of federal funds from discriminating on the basis of disability.

• Title II of the ADA prohibits discrimination on the basis of disability by state and local governmental entities, and the public sector whether or not they receive federal funds.

Section 504 and ADA

• Both statutes require school districts to provide a free appropriate public education (FAPE) to students with disabilities
Definition in Law
The provision of regular or special education and related services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of nondisabled persons are met, and that are provided without cost (except for fees imposed on nondisabled students and their parents).

FAPE (free and appropriate public education)
• Education provided at no cost to the parents,
• Designed to provide educational benefit despite the child’s disabilities,
• Provided in the environment that affords the greatest exposure to non-disabled peers (least restrictive environment).

Section 504 and ADA
• Section 504 and the ADA are civil rights laws.

• Unlike IDEA, Section 504 does not ensure that a child with a disability will receive an IEP
Student Population

All Children

504 Children

IDEA Children

IDEA Classifications

- Intellectual disabilities,
- learning impairments,
- speech or language impairments,
- visual impairment,
- serious emotional disturbance,
- orthopedic impairments,
- autism,
- traumatic brain injury,
- OHI
- specific learning disabilities.

Connecticut Add’l Classifications

- ADD/ ADHD
- deaf-blindness,
- multiple disabilities and
developmental delays (ages 3-5 only)
Equally Effective

- For benefits or services provided to be "equally effective," they must afford students with disabilities an **equal** opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement as other students.

Eligibility-IDEA

- The child who has a disability or impairment does not automatically qualify for special education services under the IDEA.
Eligibility-504
• If the child has a disability but does not need special education services, the child will not qualify for special education and related services under the IDEA but may be eligible for protections under Section 504 of the Rehabilitation Act.

Physical or mental impairment
• “any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin or endocrine: or any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.”

Three Pronged
• Has a physical or mental impairment which substantially limits one or more major life activities (current disability)
• Has a record of such impairment (historical disability)
• Is regarded as having such an impairment (perceived disability)
Current vs. historical or perceived disability

- Current disability requires accommodations
  - Must provide accommodations for disabled students
- Historical or perceived disability are anti-discrimination requirements
  - Cannot discriminate against students who have a history of a disability or because they are perceived as having a disability

Eligibility

- To be eligible for protections under Section 504, the child must have a physical or mental impairment. This impairment must substantially limit at least one major life activity.

Major Life Activities

- Caring for one's self
- Performing manual tasks
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Working
- Eating
- Sleeping
- Standing
- Lifting
- Bending
- Reading
- Concentrating
- Thinking
- Communicating
Major Bodily Functions
• Immune system
• Normal cell growth
• Digestive
• Bowel
• Bladder
• Neurological
• Brain
• Respiratory
• Circulatory
• Endocrine
• Reproductive functions

Eligibility
• To be eligible for protections under Section 504, the child must have a physical or mental impairment. This impairment must substantially limit at least one major life activity.

Did district react appropriately to child bullied because of allergy?
A Missouri second grader had a severe peanut allergy. A classmate beside her at lunch one day waved a piece of bread with peanut butter on it in front of her face. A second classmate allegedly did something similar on two occasions. When the parents complained the principal spoke to the accused students and the 2nd grade class to explain the seriousness of allergies, offered counseling to the student and made changes to prevent contact with allergic triggers.
Was district’s response adequate?

A. Yes. The district didn’t have to respond as per sections 504 because three incidents of teasing were not enough to create a hostile environment.

B. No. The district failed to address the effects of the harassment on the student.

C. Yes. The principal took prompt actions designed to stop the harassment and addressed the child’s emotional needs.

D. No. the parents did not feel the student would be safe if she returned to school.

Eligibility

• The key is whether the child has an *impairment* that *substantially limits* ... one or more ... major life activities."

Eligibility - Recap

• Not automatic
  Disability required
  Substantial limitation required
  504 not a consolation prize
Substantial Limitation

- No specific definition.
- Succeeding in regular education does not have a disability which substantially limits the ability to learn, however....
- Mitigating measures, conditions which are episodic or in remission. (ADAAA)
- Students with disabilities affecting behavioral controls.

Substantial Limitation

- A temporary impairment (less than 6 months) does not constitute a disability for purposes of § 504. ADAAA

Legal Requirements
504 Process
- Child Find
- Referral
- The 504 Committee
- Evaluation
- Placement
- The concept of FAPE

Child Find
- Required to locate eligible disabled students
  - PSAs
  - Pamphlets
  - Teachers
  - Nurses
  - School Counselors
  - Social Workers

Red flags to consider
- Frequent absences related to a medical condition,
- Suicide threats or attempts,
- Missing excessive instructional time due to a health condition,
- Medical information regarding a chronic or episodic health condition,
- Inability of student to self monitor a chronic health condition.
Health conditions likely to warrant 504 consideration
Type 1 diabetes,
Severe allergies,
Asthma,
Seizure disorders,
Depression,
Bowel and bladder disorders,
Impaired mobility disorders,
Medical diagnoses that limit life expectancy

Does student’s diabetes plan justify delaying 504 evaluation?
An Alabama high schooler with diabetes transferred to a new district in August 2007. His mother gave the new district an individual health plan from the prior school. The nurse developed an IHP on her own, and told the 504 coordinator that the parent asked for a 504 plan. The coordinator did not schedule an evaluation, but told the nurse to have the parent call him. In August 2008, the parent again requested a 504 plan. It was finally developed in March 2009.

Does the district’s delay violate Section 504?
A. Yes. An evaluation must occur within 45 days after the district learns that a student may have a qualifying disability.
B. Yes. The district should have initiated the evaluation process shortly after the student enrolled.
No. The student already had an IHP.
No. The student had good grades, and therefore did not require a 504 plan.
Referral

- Child Study Teams
- Early Intervention Teams
- Student Assistance Teams
- Response to Intervention

The district:

- must have reason to believe that the student is having academic, social or behavioral problems that substantially affect the student’s overall performance at school.
- has an obligation of attempting to address these types of problems through documented school-based interventions and/or accommodations (RTI/SRBI)
- If successful no evaluation is required.

Appropriate Evaluation

- Information from a variety of sources and is documented
- Decisions about the child, evaluation data, and placement options are made by knowledgeable individuals. Requires “periodic” reevaluation.
- No provisions are made for independent evaluations at the school’s expense.
- Requires reevaluation before a significant change in placement
Evaluation

• Parental consent is not required, but...
• Does not necessarily mean “test”
  - Gathering of data or information from a variety of sources so that the committee can make the required determinations

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<thead>
<tr>
<th>Grades</th>
<th>Language surveys</th>
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<td>Discipline referrals</td>
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<td>Health information</td>
<td>Standardized test scores</td>
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<td>Teacher reports</td>
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504 Committee

• Unlike IDEA 504 does not dictate the titles or people who must be members
• A group of persons knowledgeable about the child, the meaning of the evaluation data, and the placement options
• Parents are not required although best practice dictates that they are involved.

Placement

• In the 504 context “placement” means the regular education classroom with individually planned accommodations.
• The district must ensure that the placement decision (accommodations) be made by a group of persons, including persons knowledgeable about:
  - the child,
  - the meaning of the evaluation data, and
  - the placement options.
504 Evaluation Meeting

- Performed by the 504 committee
- Send notice to parent
- Determine appropriate committee members (who has knowledge about the child, the meaning of the evaluation data and the placement options)
- Document evaluation data
  - Gather data from a variety of sources
  - Carefully consider the data
  - Do we need additional data/formal tests?

Evaluation Meeting (cont.)

- Eligibility determination
  - Is there a physical or mental impairment?
  - What is the major life activity impacted?
  - Is there a substantial limitation?
  - Is the disability too severe for 504?

Evaluation Meeting (cont.)

- Placement/Accommodations (if eligible)
  - Does the child need services because of the qualifying disability?
  - In-class services?
  - Related services?
  - Behavior management plan needed?
  - Other programs (tutoring, peer mentor)
Avoid unnecessary accommodations

- Stay away from checklist style forms,
- Tie accommodations to evaluation data,
- Limit accommodations to what is necessary.

Following the evaluation meeting

- Report of evaluation/meeting to parent
- Copy of accommodation plan to parent (if eligible)
- Copy of accommodation plan to teachers (if eligible)

Review or Reevaluation

- Performed by 504 committee
- Prior to meeting
  - Notice of meeting to parent
- At the meeting
  - Need new evaluation data?
  - Is the child still eligible? (if not dismiss)
  - Is there a need for a change in services?
- After the meeting
  - Report of evaluation/meeting to parent
  - Copy of updated accommodation plan to parent and teachers (if any)
Must district evaluate child excluded from ‘movie day’?

A student in Michigan with ADHD and took medication never qualified for movie day. Although his grades were good he worked slower than others, was easily distracted, and had difficulty completing homework in a timely manner. The parent never requested an evaluation, the district didn’t offer one.

Did the district’s failure to assess student violate child find?

A. No. The child was ineligible for 504 because, based on his grades, his disability was not substantially limiting.
B. Yes. The parent repeatedly expressed concerns about the student’s difficulty with school work.
C. Yes. The parent’s statements amounted to a request for an evaluation.
D. No. The student’s condition did not produce any manifestations.

Must district provide interpreter for student attending play?

Mother of a hearing impaired child in Pennsylvania asked principal for a sign language interpreter for the high school musical. The cost would have been more than the total ticket sales. Gave the student a copy of the play prior to the performance and had the mother and student sit in the front row. Mother complained it was a less effective alternative given student’s low reading level.
Does high cost of interpreter justify failure to accommodate?

A. Yes. Based on the revenue expected for the play hiring an interpreter was too costly.
B. No. The principal should have considered the request in light of the district's overall budget.
C. No. Financial burden alone cannot justify failing to provide and accommodation.
D. Yes. The district would have had to pay for the interpreter from another city.

May district teach students with disabilities in portables?

• A TN district placed 14 middle schoolers with severe disabilities in a self-contained class. The class was housed in two portables outside the main school building and connected to the main building by an uncovered sidewalk.

Is location of a self-contained class discriminatory?

A. No. The portables had amenities the students needed.
B. No. The classroom had the same room and amenities as main building classrooms.
C. Yes. Placing students with disabilities in external portables always violates Sec. 504.
D. Yes. The portables segregated the students from their counterparts.
Resources

• http://www2.ed.gov/policy/rights/reg/ocr/edlite-34cr104.html
• Section 504 Frequently Asked Questions
  http://ed.gov/about/offices/list/ocr/504faq.html
• http://www.wrightslaw.com/info/sec504.index.htm
• Q&A on ADAAA
  http://www2.ed.gov/print/about/offices/list/ocr/docs/doc-504faq-201109.html
• http://www.wrightslaw.com/info/rti.index.htm
• LRP Publications, Horsham, PA 19044

Resources

• Evidence for Education-Assessment and Accomodations
• Supports, Modifications and Accomodations for Students with Disabilities
  http://nichcy.org/schoolage/accommodations#related

Questions?